

*FRUSTRATED*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
AURELIUS CAPITAL PARTNERS, LP  
and AURELIUS CAPITAL MASTER, LTD.,

Plaintiffs

-against-

THE REPUBLIC OF ARGENTINA,

Defendant.  
-----X

**ORDER TO SHOW CAUSE  
AND APPOINTING RECEIVER**

No. 07 Civ. 2715 (TPG)

-----X  
AURELIUS CAPITAL PARTNERS, LP  
and AURELIUS CAPITAL MASTER, LTD.,

Plaintiffs

-against-

THE REPUBLIC OF ARGENTINA,

Defendant.  
-----X

No. 07 Civ. 11327 (TPG)

-----X  
BLUE ANGEL CAPITAL I LLC,

Plaintiff

-against-

THE REPUBLIC OF ARGENTINA,

Defendant.  
-----X

No. 07 Civ. 2693 (TPG)

-----X  
AURELIUS CAPITAL MASTER, LTD. and  
ACP MASTER, LTD.,

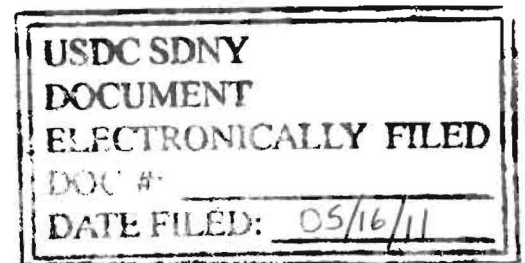
Plaintiffs

-against-

THE REPUBLIC OF ARGENTINA,

Defendant.  
-----X

No. 09 Civ. 8757 (TPG)



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AURELIUS CAPITAL MASTER, LTD. and	:
ACP MASTER, LTD.,	:
	:
Plaintiffs	: No. 09 Civ. 10620 (TPG)
	:
-against-	:
	:
THE REPUBLIC OF ARGENTINA,	:
	:
Defendant.	:
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AURELIUS OPPORTUNITIES FUND II, LLC	:
and AURELIUS CAPITAL MASTER, LTD.,	:
	:
Plaintiffs	: No. 10 Civ. 1602 (TPG)
	:
-against-	:
	:
THE REPUBLIC OF ARGENTINA,	:
	:
Defendant.	:
-----X	
AURELIUS OPPORTUNITIES FUND II, LLC	:
and AURELIUS CAPITAL MASTER, LTD.,	:
	:
Plaintiffs	: No. 10 Civ. 3507 (TPG)
	:
-against-	:
	:
THE REPUBLIC OF ARGENTINA,	:
	:
Defendant.	:
-----X	
AURELIUS CAPITAL MASTER, LTD. and	:
AURELIUS OPPORTUNITIES FUND II, LLC,	:
	:
Plaintiffs	: No. 10 Civ. 3970 (TPG)
	:
-against-	:
	:
THE REPUBLIC OF ARGENTINA,	:
	:
Defendant.	:
-----X	

-----X	:	
BLUE ANGEL CAPITAL I LLC,	:	
	:	
Plaintiff	:	No. 10 Civ. 4101 (TPG)
	:	
-against-	:	
	:	
THE REPUBLIC OF ARGENTINA,	:	
	:	
Defendant.	:	
-----X	:	
BLUE ANGEL CAPITAL I LLC,	:	
	:	
Plaintiff	:	No. 10 Civ. 4782 (TPG)
	:	
-against-	:	
	:	
THE REPUBLIC OF ARGENTINA,	:	
	:	
Defendant.	:	
-----X	:	
AURELIUS CAPITAL MASTER, LTD. and	:	
AURELIUS OPPORTUNITIES FUND II, LLC,	:	
	:	
	:	
Plaintiffs	:	No. 10 Civ. 8339 (TPG)
	:	
-against-	:	
	:	
THE REPUBLIC OF ARGENTINA,	:	
	:	
Defendant.	:	
-----X	:	

**UPON READING AND FILING** of the accompanying Declaration of Barry R. Ostrager, Esq., sworn to on May 16, 2011, with the exhibits annexed thereto, the Memorandum of Law in Support of Plaintiffs' Order to Show Cause, and upon all of the papers, pleadings, oral argument, and all prior proceedings in the above-captioned actions;

**LET THE DEFENDANT HEREIN SHOW CAUSE**, before Judge Thomas P. Griesa, Room 26B, at the United States Courthouse located at 500 Pearl Street, New York, on

the 20th day of May, 2011 at Noon, or as soon thereafter as counsel may be heard, why plaintiffs in the above-captioned actions (the "Aurelius Plaintiffs" or "Plaintiffs") should not be granted the following relief:

(a) An order appointing Bart M. Schwartz as Receiver, pursuant to N.Y. C.P.L.R. Section 5228, with the authority to take any action necessary to investigate, discover, marshal, protect, maintain or prosecute any US Patent Interests and collect payments from any Licensee with respect to any US Patent Interests, including in particular to communicate with the USPTO with respect to any pending patent applications and ensure that those pending applications are maintained and not abandoned, to take any necessary action to determine the extent and protect the value of any US Patent Interests, including any existing or contemplated arrangements with any Licensee, and, as this Court may further direct, to receive, assign, sell or transfer the US Patent Interests, including any rights to receive, assign, sell or transfer any payments received in connection with licensing agreements or royalty agreements or other agreements concerning the US Patent Interests, or to otherwise license or exploit the US Patent Interests, with any proceeds there-from to be distributed to the Aurelius Plaintiffs;

(b) Limited expedited discovery, pursuant to Fed. R. Civ. P. 26 and 69 and N.Y. C.P.L.R. 5223 and 5224, requiring the Republic and/or any garnishees acting on its behalf to produce on an expedited basis certain information relevant to the adjudication of this application; and

(c) Such other and further relief as this Court may deem necessary and appropriate under the circumstances.

**SUFFICIENT CAUSE HAVING BEEN DEMONSTRATED THEREFOR,  
THE COURT ENTERS THE FOLLOWING ORDER:**

**(1) Order Appointing A Receiver**

*Pending the Hearing Referred To Above*

**IT IS ORDERED** that, pursuant to 28 U.S.C. § 1610, Fed. R. Civ. P. 64 and 69, and N.Y. C.P.L.R. §§ 5228(a), 5234(c) and 5240, Bart M. Schwartz is hereby appointed as Receiver with respect to the US Patent Interests and to effectuate the Attachment Order entered by the Court contemporaneously herewith. The Court finds that the immediate appointment of a Receiver is necessary and appropriate: (a) in light of the technical nature of the US Patent Interests and the lack of a ready market at a public auction, (b) to marshal, protect and preserve the value of the US Patent Interests and the *status quo* while this application is pending, (c) to communicate with the USPTO, any past, existing or future assignee, co-assignee, or Licensee, the Republic including the Argentine Government entities identified in this Order, regulatory agencies, other third-parties or any representatives of any of the foregoing in order to prosecute any pending patent applications to conclusion and prevent the Republic from abandoning or wasting or removing from the United States any of its US Patent Interests while this application is pending, (d) to collect payments from any existing or future Licensees with respect to US Patent Interests and (e) to coordinate, when and as the Court may further direct, the transfer, delivery and assignment of all US Patent Interests to the Receiver, either (i) for sale by the Receiver at private auction to prospective buyers that the Receiver identifies and solicits, or (ii) for licensing or other form of commercial exploitation by the Receiver, as the Receiver may determine offers the greatest potential monetary value, with any proceeds from either (i) or (ii) to be paid over to the Aurelius Plaintiffs to satisfy their outstanding judgments upon final determination by this Court that the US Patent Interests are available to the Aurelius Plaintiffs to satisfy their judgments.



**IT IS FURTHER ORDERED** that the Receiver is authorized to employ counsel and other professionals, including but not limited to Guidepost Solutions LLC (“Guidepost”), as necessary to fulfill its duties.

**IT IS FURTHER ORDERED** that the Aurelius Plaintiffs shall fund the compensation of the Receiver and Guidepost on a monthly basis for their services at their ordinary and customary hourly rates, reimburse the Receiver and Guidepost for expenses and disbursements incurred, including but not limited to counsel and other professional fees, and advance any payments required to be made to protect and enforce rights with respect to the US Patent Interests as set forth in this Order. Such payments, reimbursements and advances shall be deducted from the sums received and disbursed by the Receiver at the end of the receivership and distributed to the Aurelius Plaintiffs, unless and as otherwise agreed or ordered by the Court. The undertaking referred to in CPLR Section 6403 for temporary receivers, insofar as applicable here, is waived.

**IT IS FURTHER ORDERED** that the Receiver is hereby authorized and empowered to take the following immediate, interim steps in relation to the foregoing to preserve the *status quo* and protect the value of the property that is the subject of this application:

- (i) communicate with the USPTO, any past, existing or future assignee, co-assignee, or Licensee, the Republic including the Argentine Government entities identified in this Order, regulatory agencies, other third-parties or any representatives of any of the foregoing or as otherwise may be appropriate to determine the extent and value of the US Patent Interests, the state of development or commercialization of any of the technologies to which they relate and the rights of the Republic, including the Argentine Government entities identified in this Order, under any agreement with respect to a US Patent Interest;
- (ii) direct any existing or contemplated Licensee in respect of any of the US Patent Interests to pay any licensing fees, royalties or other payments that may be payable to the Republic including the Argentine Government entities identified in this Order into an account maintained by the Receiver so that those monies remain in the United States and are not placed beyond the reach of the Receiver while this application is pending;

- (iii) determine, monitor and protect on an ongoing basis the US Patent Interests, including conducting any and all communications and investigations necessary to do so (including but not limited to those listed above in (i)), particularly but not exclusively in relation to (a) the protection and enforcement of any rights of the Republic, including the Argentine Government entities identified in this Order, under any agreement with any Licensee with respect to a US Patent Interest and (b) any pending patent applications by or on behalf of the Republic including the Argentine Government entities identified in this Order, to ascertain and ensure that any and all steps, communications, filings, fees or other information that may be necessary or appropriate or requested by the USPTO, regulatory agencies or any other bodies is provided to them, so as to maintain, continue and prosecute to conclusion those pending patent applications and prevent the Republic from abandoning, withdrawing or wasting any US Patent Interests while this matter is pending before the Court. It is understood that any payments required to be made to protect and enforce rights with respect to US Patent Interests will be made from funds collected by the Receiver from Licensees or in the event such funds are insufficient, payments will be advanced to the Receiver by the Aurelius Plaintiffs.

The Receiver shall refrain, unless and until further ordered by the Court upon a determination of the merits of the application and after affording the Republic an opportunity to be heard, from taking steps to arrange the transfer, delivery or assignment of the US Patent Interests to the Receiver for exploitation or sale, except as authorized above to prevent their flight from the United States.

**IT IS FURTHER ORDERED** that the USPTO, upon being furnished by the Receiver with a copy of this Order, is authorized to promptly provide to the Receiver copies of any and all communications sent or received by and between the Republic including any of the Argentine Governmental entities identified in this Order, on the one hand, and the USPTO, on the other hand, relating to any US Patent Interests, including pending patent applications, for the purpose of allowing the Receiver to fulfill the obligations identified above, including any communications that may be presently outstanding and require any form of response by the Republic including any of the other Argentine Governmental entities identified in this Order in relation to any pending U.S. patent applications or otherwise. For the benefit of the Receiver and

USPTO, a list of the presently-known US Patent Interests of the Republic is set forth in Appendix A to this Order.

**IT IS FURTHER ORDERED** that the Republic, including ANPCT, CONICET, CNEA, INTA and INTI, and all assignees, co-assignees and any past, existing, or future Licensee, regulatory agencies, other third-parties or any representatives of any of the foregoing, upon being furnished by the Receiver with a copy of this Order, shall provide the Receiver with all information, documents, agreements, communications, and/or records the Receiver requests that is necessary and appropriate to enable the Receiver to perform the duties as described above.

**IT IS FURTHER ORDERED** that the Receiver or the Aurelius Plaintiffs may apply at any time, on notice to the Republic, for such further orders as may be necessary to enable the Receiver to carry out the terms of this Order.

**IT IS FURTHER ORDERED** that any and all expiry dates or other deadlines that may exist under the N.Y. C.P.L.R. in connection with this Order appointing a Receiver under Sections 5228 and 5234(c) thereof are hereby extended until 30 days following final resolution of Plaintiffs' application, including any related appeals, proceedings on remand, and any subsequent appeals.

**IT IS FURTHER ORDERED** that the docketing of this Order in the above-captioned cases, and service of a copy of this Order by U.S. first-class mail, to counsel for creditors of the Republic of Argentina in other cases in the Southern District of New York and known to the Aurelius Plaintiffs, shall constitute good and sufficient and practicable notice to other creditors of the appointment of a Receiver, pursuant to N.Y. C.P.L.R. Sections 5228(a) and 5240.



**(2) Limited Expedited Discovery**

**IT IS FURTHER ORDERED** that pursuant to Fed. R. Civ. P. 69 and N.Y. C.P.L.R. 5223 and 5224, the Republic, and/or any garnishees acting on its behalf and within the jurisdiction of the Court, is directed within 14 days of the date of this Order to produce to the Aurelius Plaintiffs, with copies to the Receiver, the following specific documents:

1. All documents, communications, and/or records concerning any and all patents owned by and/or applied for by the Republic, in whole or in part, directly or indirectly, including any patents issued, or applications pending, in the names of, or for the benefit of, any of ANPCT, CONICET, CNEA, INTA or INTI.
2. All documents, agreements, contracts, communications, and/or records concerning (a) any and all licensing, royalty, exploitation or similar agreements or arrangements entered into with any Licensee directly or indirectly relating to any patents owned by and/or applied for by the Republic, including any of ANPCT, CONICET, CNEA, INTA or INTI, in whole or in part, and/or (b) any and all licensing, royalty, exploitation rights or similar fees or payments made to the Republic or for the Republic's benefit, in connection with any patent, whether directly or indirectly, including any patents issued, or applications pending, in the names of, or for the benefit of, any of ANPCT, CONICET, CNEA, INTA or INTI.

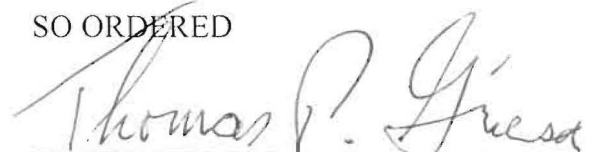
**IT IS FURTHER ORDERED** that personal service of this Order to Show Cause, and the papers upon which it is based, upon counsel for the Republic, Cleary, Gottlieb, Steen & Hamilton, One Liberty Plaza, New York 10006, attention Carmine D. Boccuzzi, Jr., Esq., on or before the 16<sup>th</sup> day of May, 2011, shall be deemed good and sufficient service on the Republic.

**IT IS FURTHER ORDERED** that opposing papers, if any, are to be served upon counsel for the Aurelius Plaintiffs, Simpson Thacher & Bartlett LLP, 425 Lexington Avenue, New York, NY 10017, attention Susan M. Cordaro, Esq., so as to be received by such counsel by no later than 12:00 p.m. on the 17<sup>th</sup> day of May, 2011.

**AND IT IS FURTHER ORDERED** that Reply papers, if any, shall be served upon Defendant's counsel after the above-ordered discovery is made available to the Aurelius Plaintiffs and/or as further directed by the Court.

Dated: May 16, 2011 at 3:15 ~~a.m.~~/p.m.  
New York, New York

SO ORDERED

  
Hon. Thomas P. Griesa, U.S.D.J.



## APPENDIX A

<u>HOLDER</u>	<u>TITLE</u>	<u>ISSUED/ PUBLISHED</u>	<u>PATENT/ PUBLICATION NUMBER</u>
<b>1. ANPCT</b>			
(1)	Prosthetic Heart Valve	Issued	6,723,123
(2)	Hydraulic Seal for Rotary Pumps	Issued	6,595,743
(3)	Continuous Flow Rotary Pump	Issued	6,247,892
<b>2. CNEA</b>			
(1)	Double cap system for the handling and transfer of hazardous materials	Issued	7,841,483
(2)	Promoter inducible by reactive oxygen species and vector comprising the same	Published	20100297024 (co-held with CONICET)
<b>3. CONICET</b>			
(1)	DNA constructs that contain Helianthus annuus Hahb-10 gene coding sequence, method for generating plants with a shortened life cycle and a high tolerance to herbicidal compounds and transgenic plants with that sequence	Issued	7,674,954
(2)	COX5c-1 gene intron for increasing expression level in cassettes, plant cells and transgenic plants	Issued	7,598,368
(3)	DNA molecules optimized sequences that encode the IA-2IC antigen, RNA molecules, expression vectors, transformed cells, method of preparing the IA-2IC antigen, polypeptide of the human IA-2IC antigen, and in vitro procedure and kit for the diagnosis of autoimmune diabetes	Issued	7,339,040
(4)	Laser apparatus for measuring dirt density on steel plates	Issued	6,546,784

<u>HOLDER</u>	<u>TITLE</u>	<u>ISSUED/ PUBLISHED</u>	<u>PATENT/ PUBLICATION NUMBER</u>
	(5) Process for manufacturing a biologically active fermented milk product and product obtained by the process	Issued	6,033,691
	(6) Pharmaceutical composition for use in the treatment of wounds	Issued	7,932,237
	(7) Promoter inducible by reactive oxygen species and vector comprising the same	Published	20100297024 (co-held with CNEA)
	(8) Use of PDE5 inhibitors for treating circadian rhythm disorders	Published	20110046141
	(9) Use of pharmaceutical compound in the treatment of wounds	Published	20110034409
	(10) Method for the treatment of psychic disorders	Published	20110003796
	(11) Thomsen-Friedenreich Disaccharide Modified Immunogen (TFD), Preparation procedure, compositions comprising it, uses, and treatment methods	Published	20100297159
	(12) Process for preparing attenuated viral strains	Published	20100278858
	(13) Method and apparatus for determining the thermal expansion of a material	Published	20100208242
	(14) Cell lines, compositions comprising them for the treatment of melanomas, procedures to prepare the compositions, and treatment methods	Published	20100183683
	(15) Compound showing anti-inflammatory activity and antiviral activity, pharmaceutical compositions comprising the same, a process for obtaining the same and use of the same in the treatment of epidemic keratoconjunctivitis and herpetic stromal keratitis	Published	20100120735
	(16) Articulated structure for soil protection and reinforcement	Published	20100104379
	(17) Passive stream regulation system applicable to heat exchangers	Published	20100065046
	(18) Sunroof	Published	20100065041
	(19) Small organism locomotor recording procedure and device, behavioral record obtained and use of same	Published	20100063744



<u>HOLDER</u>	<u>TITLE</u>	<u>ISSUED/ PUBLISHED</u>	<u>PATENT/ PUBLICATION NUMBER</u>
(20)	Method and device for detecting deglutition in babies	Published	20100056961
(21)	Implantable Ocular Microapparatus to ameliorate glaucoma or an ocular overpressure causing disease	Published	20100042209
(22)	Compound having inhibitory activity on a RHO-GTPASE cell protein, a process for obtaining the same, pharmaceutical compositions comprising thereof and a method for the treatment of RHO-GTPASE cell protein-mediated condition	Published	20090324708
(23)	Compositions, kits, and methods for the modulation of immune responses using Galectin-1	Published	20090191182
(24)	Compositions, kits, and methods for the diagnosis, prognosis, and monitoring of immune disorders using Galectin-1	Published	20090176223
(25)	Methods of preparing a therapeutic formulation comprising galectin-induced tolerogenic dendritic cells	Published	20090004259
<b>4. INTA</b>			
(1)	Monomeric VHH domain derived from anti-VP6 camelid antibodies, dimeric domain, immunisation method, rotavirus detection method, composition, prevention and treatment methods for rotavirus infections	Published	20100330068
(2)	Herbicide-resistant rice plants, polynucleotides encoding herbicide-resistant acetohydroxy acid synthase large subunit proteins, and methods of use	Published	20100029485
(3)	Drag-type cotton harvester operated by an independent driving unit	Published	20070234696
(4)	Rice plants having increased tolerance to imidazolinone herbicides	Published	20070028318
<b>5. INTI</b>			
(1)	Bactericidal filler composition	Published	20090188408